

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

REC'D 03 JUN 2005

**PCT**  
WIPO PCT

To:  
MICHAEL C. BARRETT  
FULBRIGHT & JAWORSKI, LLP  
600 CONGRESS AVENUE, SUITE 2400  
AUSTIN, TX 78701

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing  
(day/month/year) **01 JUN 2005**

Applicant's or agent's file reference

AMBI:091WO

**FOR FURTHER ACTION**

See paragraph 2 below

International application No.

PCT/US04/34850

International filing date (day/month/year)

21 October 2004 (21.10.2004)

Priority date (day/month/year)

24 October 2003 (24.10.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): B02C 19/00 and US Cl.: 241/2, 184

Applicant

AMBION, INC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Authorized officer

Mark Rosenbaum

Telephone No. 571-272-4050

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/34850

**Box No. I Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US04/34850

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-30</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-30</u>	NO
Industrial applicability (IA)	Claims <u>1-30</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 1-30 lack an inventive step under PCT Article 33(3) as being obvious over Tomes et al in view of either Berchem or Trumpler. Tomes et al discloses the basic grinding of biological material with spherical grinding media. Both Trumpler and Berchem show a similar apparatus and process for treating material including using non-spherical type media. In order to provide for the advantages of non-spherical type media, providing this type of media into Tomes et al would have been obvious in view of either Trumpler or Berchem.

Claims 1-30 meet the criteria set out in PCT Article 33(2) because the prior art does not teach or fairly suggest in a single reference the milling of biological material with non-spherical media.

Claims 1-30 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.